HASBULLAH ISHAK

v.

MENTERI HAL EHWAL DALAM NEGERI, MALAYSIA & ANOR.

HIGH COURT MALAYA, ALOR SETAR
KC VOHRAH J
[CRIMINAL APPLICATION NO. 44-71-90]
16 MARCH 1991

PREVENTIVE DETENTION: *Representation to advisory board - Prescribed form - Detainee only given 1 copy of form - Effect of - Of detention period - Removal order - Not served on detainee - Effect of - Sections 6(1), 9(1), 11A(7)(a)(aa), and 15(1), Dangerous Drugs (Special Preventive Measures) Act 1985; Schedule to the Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987, Articles 151(1)(a), 149 Federal Constitution.*

H was detained under s. 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985.

The Schedule to the Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987 provide the prescribed forms to be used by H to make his representation to the advisory board. H however only received 1 copy of the form whereas he was entitled to 3 copies of the said form.

In his application for *habeas corpus*, H also raised the issue that although the Deputy Minister ordered his removal from the detention at Pulau Jerejak to the centre at Muar, H was not served with the removal order.

Held:

[1] The failure to provide the 3 copies of Form I to H did not result in substantial injustice to the applicant as the advisory board had in fact considered the representatives and had made recommendations to the Yang di-Pertuan Agong.

[2] The Court having examined the Act and the rules made thereunder could not find any requirement that the detainee had to be served with the removal order prior to his removal.

[3] The continued detention of H was therefore lawful.

[H's application dismissed.]

Cases referred to:
Re P.E. Long @ Jimmy & Ors. [1976] 2 MLJ 133
Mat v. Inspector General of Police, Malaysia & Anor. [1974] 1 MLJ 131

Legislation referred to:
Dangerous Drugs (Special Preventive Measures) Act 1985, ss. 6(1), (6), 7(2), 9(1), (2)(b), 11A(1)(c)(aa), 15(1)
Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987, rr. 3, (2), (4)

For the applicant - Shanmugam; M/s. Shanmugam & Co.
For the respondent - Nor Bahari, Federal Counsel

[**Editor's Note:** H has appealed to the Supreme Court.]

JUDGMENT

KC Vohrah J:

Hasbullah bin Ishak was detained under s. 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 (the Act) by order of the Deputy Minister of Home Affairs commencing from 3 May 1988. The detention was for 2 years and at the detention centre in Pulau Jerejak, Penang.

A prescribed document (Form I set out in the Schedule to the Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987 (the Rules) allowing for representations to be made formally from the detainee to the advisory board was received by the board on 14 May 1985 and the matter was heard by the advisory board on 16 June 1988 and on 17 June 1988 the board made its recommendations to the Yang di-Pertuan Agong. The affidavit evidence shows that before the detainee had made his representations he only received one copy of Form I on which he could make the representations although r. 3 of the Rules provides for 3 copies to be given to a detainee.

The detainee's period of detention was extended under s. 11A(1)(c)(aa) of the Act for a period of 1 year and while the detainee was undergoing the further period of detention, the Deputy Minister of Home Affairs, acting under s. 15(1) of the Act, ordered his removal from the detention centre at Pulau Jerejak to the detention centre at Muar. The detainee averred that he was not served with the removal order.

In this application for a writ of *habeas corpus* two issues were raised for argument.

The **first issue** was whether the failure to serve 3 copies of a prescribed document, Form I, on the detainee meant that his continued detention after the failure to serve the 3 copies was unlawful notwithstanding that he did make representations on the one copy that was served on him and the representations were in fact considered by the advisory board. I held that the continued detention was not unlawful.

The **second issue** was whether the failure to serve the order of removal on the detainee before he was moved from one place of detention to another pursuant to the order of the Deputy Minister made under s. 15(1) of the Act meant that his continued detention at the second place of detention was unlawful. I held the continued detention was not unlawful.

The applicant has appealed against my refusal to direct that he be set at liberty.

I now give the reasons for my rulings on both issues.

First Issue

It is Article 151(1)(a) of the Constitution which, *inter alia*, imposes a duty on the authority detaining a person under any law or ordinance promulgated in pursuance of Part IX of the Constitution (and the Act is made under Article 149 falling under such Part) to give the person detained the opportunity of making representations against the order of detention as soon as may be. A mere statute cannot derogate from that and thus the right is again made explicit in s. 9(1) of the Act. But a right given can be made illusory if a person given the right does not know of the right or he is obstructed from exercising the right. So the Act provides under s. 9(2) for the person at the time of service of the order of detention to be informed of that right to make representations to the advisory board and for him to be furnished with a statement in writing of the grounds on which the order is made and of the allegations of fact on which the order is based; and of such particulars, if any, the detainee

may in the opinion of the Minister reasonably require an order to make his representation against the order to the advisory board. Section 9(3) has left it to the Yang di-Pertuan Agong to make, *inter alia*, rules as to the manner in which representations may be made. The Rules were made and published as P.U. (A) 345/1987. Among the rules is r. 3 which imposes a duty on the police officer serving the detention order to inform the detainee of his right to make representations against the detention order. It also states, *inter alia*, under subrule (1)(b), that the police officer

> shall provide him with three copies of Form I prescribed in the Schedule

Rule 3(2) provides that a detainee who desires to make representations

> shall complete Form I and shall forward 2 copies of the completed Form I and shall forward 2 copies of the completed Form I duly signed by him

to the Secretary of the board through the officer-in-charge of the Police District. It seems clear that the detainee retains 1 copy and submits 2 copies to the police officer. Under r. 3(4) this officer "who receives any written representation in Form I shall forthwith forward such representation" to the Secretary of the board. There may be a bureaucratic reason why 2 copies need to be submitted by the detainee - it is not for me to question its wisdom - but quite clearly there can be no magic in the number two. Of vital importance is that the board does receive a copy of the representations made. I fail to see how, if an extra copy of the document is not received by the advisory board, the board has the right to reject the representations on the one copy that it has received. The board has no such right. In the present application the question that should be asked is whether the failure to provide the 3 copies of Form I to the applicant has resulted in substantial injustice to the applicant (see *Re P.E. Long @ Jimmy & Ors*. [1976] 2 MLJ 133). The answer is clearly no. The advisory board in fact considered the representations on 16 June 1988 and on 17 June 1988 the board made its recommendations to the Yang di-Pertuan Agong; and I cannot see anything from the record, nor was it alleged or suggested, that the fact of the detainee being served with one copy instead of 3 copies of Form I prejudiced the representations made or the consideration given to the representations by the advisory board. I therefore held that the failure to serve the extra 2 copies of Form I on the detainee did not make his continued detention unlawful.

Second Issue

Having gone through the Act and the rules made thereunder I could not and cannot see any provision requiring that before a detainee is moved from one centre of detention to another pursuant to the order of the Minister or Deputy Minister of Home Affairs made under s. 15(1) of the Act the detainee has to be served with the removal order. There are certain express provisions for certain documents to be served on the detainee (see for the example, ss. 6(6), 7(2), 9(1), (2)(b) of the Act) and if Parliament intended the order of removal made under s. 15(1) to be served on the detainee then Parliament would likewise have made express provision to that effect. Counsel for the applicant relied on *Mat v. Inspector General of Police, Malaysia & Anor*. [1974] 1 MLJ 131 and submitted that the order of removal should have been served on his client as he should have been made aware of what was happening to his detention. With respect I do not see how the case of *Mat* is relevant as it dealt with a matter where service was required of an order cancelling an earlier restriction order (under a different statute) and it was held by the Federal Court that the order cancelling the original order had been properly served on the appellant. As for the argument that the detainee should have been made aware as regards what was happening to his detention, of his being removed to another place of detention, it is probably true that the removal would have inconvenienced

him and would-be visitors who were unaware of the removal. That however is no good reason to say that his continued detention at the new place of detention after that removal is unlawful. Accordingly I held that the continued detention of the applicant was not unlawful.

In the result I dismissed the application of Hasbullah that he be set at liberty.

Also found at [1991] 2 CLJ 1174